

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4001 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAVIN @ DIPU @ RAMESH @ RAJU @ BABU CHHAGAN DODIYA PATEL

Versus

DISTRICT MAGISTRATE

Appearance:

MR PR JOSHI for MR VIJAY H PATEL for Petitioner
MR KC SHAH, AGP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 31/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu- Navin @ Dipu @ Ramesh @ Raju @ Babu Chhagan Dodiya Patel has brought under challenge the detention order dated 23/3/1996 rendered by the respondent no.1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Ac, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-C to the petition. They inter-alia indicate that the petitioner has been carrying on criminal and anti-social activities of committing house trespass, thefts and extortion and following offences have been registered in the Bharuch City Police Station against him :-

1) CR 66/95 U/Ss.457 & 380 of IPC
Pending in Court.

2) CR 65/95 U/Ss.457 & 380 of IPC
Pending in Court.

3) CR 120/95 U/Ss.224, 120B & 114 of IPC
Pending in Court.

3. Over and above the aforesaid registered cases it has been recited in the grounds of the detention that confidential statements have been given by some witnesses alleging that the petitioner has been creating atmosphere of fear amongst innocent people and is thereby adversely affecting public order.

4. I have heard the learned advocate for the petitioner and the learned AGP for the State. The petitioner has challenged the order inter-alia on the ground of delay as can be seen from para. 18(C), which reads as under :-

"The petitioner submits that the petitioner was arrested on 1/10/1995 in connection with the offence being C.R. No. 120 of 1995. The petitioner further submits that the impugned order of detention is passed against the petitioner on 23/3/1996 and thus there is a great delay between the date of registration of the last offence and the date of passing the impugned order of detention against the petitioner. The petitioner submits that if at all the petitioner was really a menace to the public order, then the detaining authority ought not to have waited for such a long period and thus the livelink between the registration of the last offence and the date of passing the impugned order of detention is snapped and thus the subjective satisfaction arrived at by the detaining authority is vitiated and the impugned order of detention is illegal and the same requires to be quashed and set aside."

It has been submitted that though the petitioner was arrested on 1/10/1995 the offence was registered on 10/8/1995 and, therefore, the ground of delay has further been strengthened.

5. Although there is no affidavit in reply to the aforesaid ground of delay, it has been submitted by Mr. K.C. Shah, Ld. AGP that the delay would stand explained by the fact that the witnesses have given their statements regarding the petitioner's activity. However, although the grounds do not indicate the particulars of such statements, it has to be borne in mind that the last reported case is of 10/8/1995. Even on scrutiny of statements Mr. Shah fairly concedes that the statements are also of November 1995. In that view of the matter all the cases including the statements of witnesses are quite old. Almost more than 5 months after the last of the said cases and last of the statements of the witnesses the impugned order of detention has been passed by the detaining authority. It can therefore, hardly be said that the delay has been explained by the detaining authority. In the context of such facts reliance has been placed on the decision of the Hon'ble Supreme Court in the case of P.N. Paturkar v/s. S. Rama Murti, reported in AIR 1994 SC 656. There the reference was made to an earlier decision of the Apex Court in the case of A.T. Abul Rahman v. State of Kerala, (1989) 4 SCC 741 : AIR 1990 SC 225). Following observations have been quoted :-

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to

investigate whether the causal connection has been broken in the circumstances of each case."

In the case before the Supreme Court there was a delay of 5 months and 8 days from the date of registration of the last case and of more than 4 months from the submission of the proposal. The statements were obtained only after detenu became successful in getting bail in all the cases registered against him. In so far as the present case is concerned, the facts as noted above speak for themselves. The result is that the decision in P.N. Paturkar's case (supra) would be applicable to the facts of the present case.

6. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of P.N. Paturkar (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner-detenu-Navin @ Dipu Ramesh @ Raju @ Babu Chhagan Dodiya Patel shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

In case the petitioner's bail application in any of the aforesaid cases is yet not decided or in case the petitioner is to prefer a bail application in any of the aforesaid cases or in case the petitioner is in fact not on bail in any of the aforesaid cases, this order shall not in any manner affect the stand/case of either side in the matter regarding granting of or refusing bail, if any.

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